## APPENDIX A — ORDER OF THE ILLINOIS APPELLATE COURT DATED APRIL 20, 2000

**ILLINOIS APPELLATE COURT**

No. 98-3886

GERTRUDE GREEN, As Administratrix of the Estate of SOL GREEN and INDIVIDUALLY,

Plaintiff-Appellant and Cross-Appellee,

v.

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC. and CANTWELL & CANTWELL,

Defendants-Appellees and Cross-Appellants.

Appeal from the Circuit Court of Cook County.

No. 97 L. 4850

The Honorable Michael J. Hogan, Judge Presiding.

ORDER

Plaintiff, Gertrude Green, appeals from an order of the circuit court of Cook County granting defendants', Merrill Lynch, Pierce, Fenner & Smith, and Cantwell & Cantwell, combined Sections 2-615 and 2-619 motion to dismiss. 735 ILCS 5/2-615; 735 ILCS 5/2-619 (1998). On appeal, plaintiff

contends that the trial court erred in dismissing her complaint (1) by applying a two-year statute of limitations to her abuse of process claim, (2) by applying the doctrines of *res judicata* and collateral estoppel to conclude that her claims were barred, and (3) by determining that, as a matter of law, a principal cannot conspire with his agent or aid and abet his agent in the commission of a tort. Defendants cross-appeal the trial court's denial of their petition for sanctions pursuant to Rule 137 of the Illinois Supreme Court. We affirm.

On February 19, 1986, Merrill Lynch brought suit in the Superior Court for the County of San Diego, State of California, against, among others, Sol Green. On November 14, 1988, judgment was entered in that Superior Court against defendants, including Sol Green, in favor of Merrill Lynch in the amount of $84,955.19.

On August 25, 1988, Sol Green was the owner of certain real property located at 1322 Seward Street, Evanston, Illinois. On that date Sol Green, as grantor, conveyed the property via quit claim deed, to Gertrude Green for no consideration.

On August 3, 1989, Merrill Lynch filed a Petition for Registration of Foreign Judgment in the circuit court of Cook County, Law Division. This Petition to register was served on Sol Green on August 8, 1989. On September 21, 1989, pursuant to a Special Motion for Entry of Default Judgment filed by Merrill Lynch against Sol Green, judgment was entered by the circuit court in favor of Merrill Lynch and against Sol Green in the amount of $84,955.19, together with post-judgment interest thereon in the amount of $7,240.08 for a total judgment amount of $95,195.27, plus costs of suit.

*Appendix A*

Prior to and at the time of the conveyance by Sol Green to Gertrude Green of the subject premises, Sol Green owned no significant assets, other than the house, from which to pay existing and contemplated indebtedness, including the claim by Merrill Lynch for the amounts due. Subsequent to and as a result of the transfer by Sol Green to Gertrude Green of the premises, Sol Green became insolvent and unable to pay his claim to Merrill Lynch.

On January 9, 1992, Merrill Lynch filed a motion to set aside the above conveyance as fraudulent, and later filed a motion for summary judgment on this cause. The matter was fully briefed and argued, and the trial court (the circuit court of Cook County) took the matter under advisement.

In the meantime, the Estate of Sol Green (who died in January 1990), had initiated proceedings in California to vacate the California judgment. The California court issued a Temporary Restraining Order ("TRO"), staying the proceedings in Illinois. On January 22, 1993, the Motion of the Estate of Sol Green for a Preliminary Injunction was denied by the California court and the TRO was dissolved. The California court found that the estate had failed to carry its evidentiary burden to support injunctive relief and failed to pursue diligently its attempt to vacate the default judgment entered against Sol Green. On August 13, 1993, the California Superior Court dismissed with prejudice the estate's attempt to vacate the default judgment.

After the matter was resolved in the California court, on April 13, 1993, the circuit court of Cook County granted Merrill Lynch's Motion for summary judgment on its Petition to Set Aside Fraudulent Conveyance. On appeal, this court

affirmed the trial court's grant of summary judgment in an order pursuant to Supreme Court Rule 23. On June 8, 1993, the court entered an order granting Merrill Lynch's "Motion to Enter Judgment and Grant Turnover". The Evanston property was sold at a public sale to Merrill Lynch, the highest bidder, for $90,000. Merrill Lynch's Motion to Confirm Sale was granted on November 5, 1993. Gertrude Green appealed this ruling to this court. In an order pursuant to Supreme Court Rule 23, this court affirmed, finding that the record in this case conclusively established that Merrill Lynch had proven fraud-in-law.

On April 24, 1994, Gertrude Green filed a Complaint in the U.S. District Court for the Northern District of Illinois seeking to vacate the California judgment entered against Sol Green on November 14, 1988. Although the order of the Federal District Court was later vacated based on lack of federal subject matter jurisdiction, that court found that Green's fourth attempt to attack the judgment of the California court was precluded by the doctrines of *res judicata* and/or collateral estoppel.[1]

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1. The federal court pointed out that "Green and his estate have had ample opportunity to challenge Merrill Lynch's claim and its subsequent attempts to enforce its judgment have cycled through various counsel and three court systems in the process. The issue of whether or not the California courts obtained personal jurisdiction over Sol Green was decided in the initial default judgment, effectively upheld by the dismissal with prejudice of the estate's attempt to vacate that default, and further confirmed by the Illinois state court's recognition of that judgment and refusal to allow a collateral attack. ***Whether barred by res judicata or collateral estoppel, one thing is certain: Gertrude Green will no longer beat this dead horse in this Court.***" (emphasis added).

*Appendix A*

On April 27, 1997, plaintiff filed the complaint in the instant action. Defendants moved to dismiss pursuant to Sections 2-615 and 2-619 of the Illinois Code of Civil Procedure. The trial court granted the motion and dismissed the complaint. Defendants then filed a Petition for Sanctions pursuant to Rule 137 of the Illinois Supreme Court. Plaintiff responded along with a Motion for Reconsideration. The trial court denied both motions on September 8, 1998. This appeal followed.

Our review is *de novo. Board of Directors of Bloomfield Club Recreation Ass'n v. Hoffman Group, Inc.*, 186 Ill. 2d 419 (1999); *Petty v. Crowell*, 306 Ill. App. 3d 774 (1999).

*I. The Appropriate Statute of Limitations*

The requisite elements of an action for abuse of process in Illinois are: (1) the existence of an ulterior purpose or motive; and (2) some act in the use of the legal process which is not proper in the regular prosecution of the proceedings. *Holiday Magic v. Scott*, 4 Ill. App. 3d 962, 966, *appeal denied*, 52 Ill. 2d 594 (1974). The action lies for improper use of process after it has been issued for the purpose of accomplishing a result which could not be accomplished through the suit itself. See *Bonney v. King*, 201 Ill. 47, 50-51 (1903) Courts in Illinois have found that this cause of action generally requires plaintiff to have suffered an actual arrest or seizure of his property. *John Allan Co. v. Brandow*, 59 Ill. App. 2d 328, 335, appeal denied, 32 Ill. 2d 625 (1965).

In the instant case, the last act which may have given rise to the abuse of process action herein was the October

*Appendix A*

1993 Judicial Sale of the Evanston property and subsequent confirmation of Sheriff's Report of Sale on or about November 5, 1993.

Relying on this court's holding in *Withall v. Capitol Federal Savings of America*, 155 Ill. App. 3d 537 (1987), the trial court ruled that plaintiff's cause of action for abuse of process is governed by the two-year statute of limitations set forth in Section 13-202 (735 ILCS 5/13-202 (West 1986)). Accordingly, the last day on which plaintiff could have filed the complaint herein was November 5, 1995. Since she failed to file on or before that date, the court found that her Complaint was time barred. Plaintiff contends that the trial court's reliance on *Withall* was misplaced in that its holding was rejected by this court in *Safeway Insurance Co. v. Spinak*, 267 Ill. App. 3d 513 (1994).

In *Safeway*, this court addressed the appropriate statute of limitations for the tort of filing an unauthorized lawsuit. The appellees in that case pointed to *Withall* in support of their contention that the two-year statute of limitations found in 13-202 should be applied to that cause of action. This court disagreed, and applied the five-year statute of limitations found in 13-205 (735 ILCS 5/13-205 (West 1993)).

We note first that before reaching the above conclusion, the court in *Safeway* stated "[w]e are not instantly asked to determine the limitation period applicable to an action for abuse of process and, consequently, we will not comment upon the holding in *Withall* other than to note that it is unsupported by citation to authority." *Safeway*, 267 Ill. App.

3d at 517. As the preceding language makes clear, this court in *Safeway* did not overrule *Withall* (and in fact specifically declined to do so), the holding therefore retains its vitality as good law and binding precedent on trial courts of this state. See *State Farm v. Yapejian*, 152 Ill. 2d 533, 5390 (1992). Nevertheless, plaintiff urges that dicta in *Safeway* compels a different conclusion. Specifically, this court stated "[m]alicious prosecution and abuse of process are separate and distinct torts which differ elementally, and an action for the 'unauthorized filing' of a lawsuit is separate and distinct from both." *Safeway*, 267 Ill. App. 3d at 519. While we do not now disagree that malicious prosecution and abuse of process are different torts, we find that elementally, they are similar causes of action, although abuse of process requires less proof. Specifically, abuse of process claims allow plaintiffs to recover without showing want of probable cause of termination of the original suit in his favor.[2] See Dan B. Dobbs, Torts § 438 at 1235 (2000). In this way, plaintiffs who might otherwise be left without a remedy are allowed an alternative possibility. We determine that abuse of process is an extension or outgrowth of the tort of malicious prosecution, there being different elements but a similar policy and purpose (the prevention of abusive initiation and continuation of lawsuits) to each cause of action. Accordingly, it would be inconsistent to apply a two-year statute of limitations to one, and a five-year statute of limitations to the other. Furthermore, we see no reason to

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2. We have reviewed the cases cited by plaintiff in purported support of her contention, and find that they buttress our conclusion that the torts of malicious prosecution and abuse of process "share much in common and often overlap." *Hyde Construction Co. v. Koehring Co.*, 387 F. Supp. 702 (S.D.Miss. 1974).

depart from the holding in *Whithall* and thus we hold that the trial court correctly applied the two-year statute of limitations found in 13-202 to bar plaintiff's cause of action.

*II. Res Judicata and Collateral Estoppel*

Under the doctrine of *res judicata*, a final judgment on the merits rendered by a court of competent jurisdiction acts as a bar to a subsequent suit between the parties involving the same cause of action. *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334-35 (1996). The bar extends to what was actually decided in the first action, as well as those matters that could have been decided in that suit. *La Salle National Bank v. County Board of School Trustees*, 61 Ill. 2d 524, 529 (1975).

For the doctrine of *res judicata* to apply, the following three requirements must be satisfied: (1) there was a final judgment on the merits rendered by a court of competent jurisdiction, (2) there is an identity of causes of action, and (3) there is an identity of parties or their privies. *DeLuna v. Triester*, 185 Ill. 2d 565, 572 (1998).

In this case, the trial court found that plaintiff's complaint was barred by the application of the doctrine of *res judicata* since the issues being litigated in the instant action (essentially, the validity of the Judgment(s) against Sol Green in favor of Merrill Lynch) were already litigated in California during the motion for preliminary injunction, or alternatively, could have been litigated within the context of the proceeding conducted pursuant to the motion to register foreign judgment before the circuit court of Cook

County. Plaintiff argues that this ruling was erroneous in that she could not have litigated her abuse of process claim within those proceedings, since that claim did not arise until there was an actual seizure of her property in the form of the June 8, 1993 Judicial Sale.[3] See *Bonney v. King*, 201 Ill. 2d at 50-51. Therefore, she argues, *res judicata* should not be a bar to the instant action.

A. Identity of causes of action.

In their brief, defendants refer us to *Rodgers v. St. Mary's Hospital*, 149 Ill. 2d 302 (1992), in which our Supreme Court explained that Illinois courts have adopted two tests for determining whether there is an identity of causes of action for purposes of *res judicata*. Those tests are known as the "same evidence" test and the "transactional" test. *Rogers*, 149 Ill. 2d at 311-12. We note that in *River Park Inc. v. City of Highland Park*, 184 Ill. 2d 290, 311 (1998), the Court expressed a preference for the use of the transactional test. The transactional test provides that "the assertion of different kinds or theories of relief still constitutes a single cause of action if a single group of operative facts give (sic) rise to the assertion of relief." *River Park*, 184 Ill. 2d at 307, quoting *Rodgers*, 149 111. 2d at 312, quoting *Pfeiffer v. William Wrigley Jr. Co.*, 139 Ill. App. 3d 320, 323 (1985), quoting *Baird & Warner, Inc. v. Addison Industrial Park, Inc.*, 70 Ill. App. 3d 59, 64 (1979). In other words, where a plaintiff has already litigated based on a group of operative facts, he

3. We note that plaintiff does not dispute that there is identity of parties/privies, and so we concentrate our analysis on the remaining two prerequisites to the application of the *res judicata* doctrine.

should not be allowed to "substitute labels" and then proceed under a different cause of action. *River Park*, 184 Ill. 2d at 316. See e.g., *Board of Education of Sunset Ridge School District No. 29 v. Village of Northbrook*, 295 Ill. App. 3d 909, 917 (1998) (earlier suit between the parties concerning annexation involved the same cause of action as a subsequent suit involving annexation); *Zabel v. Cohn*, 283 Ill. App. 3d 1043, 1049-50 (1996) (former employee's suit against employer for unjust enrichment, breach of contract, *quantum meruit*, and administrative review of the dismissal of his wage claim involved the same cause of action as his previous suit alleging an entitlement to a distribution of the assets of the law firm where he worked); *Bennett v. Gordon*, 282 Ill. App. 3d 378, 383 (1996) (attorney's fee petition and client's legal malpractice action were the same cause of action); *Horton v. Caterpillar, Inc.*, 260 Ill. App. 3d 150, 153 (1994) (employee's federal action against his employer was the same cause of action as his state claim for retaliatory discharge). In order properly to allege abuse of process, plaintiff would have to show that defendants committed some act in the use of the legal process which is not proper in the regular prosecution of the proceedings. *Holiday Magic*, 4 Ill. App. 3d at 966. In her attempt to make such a showing, plaintiff seeks to establish that: (1) Sol Green's signature on the account agreement was forged; (2) Sol Green had resigned from Moving Up and did not know about the Merrill Lynch accounts: (3) Merrill Lynch knew that Sol Green resigned; (4) Merrill Lynch knew that Sol Green did not live or work in California when they served him with summons and complaint in California; (5) Sol Green was not indebted to Merrill Lynch; (6) Merrill Lynch is not the holder of a valid final judgment from California; (7) Merrill Lynch should

not have been permitted to register its judgment in Illinois; (8) Gertrude Green did not receive the subject property via a fraudulent conveyance; and (9) the subject property was not properly sold via judicial sale. As the trial court correctly determined, each of these issues was litigated in the California proceeding in which plaintiff's TRO was dissolved, and in Illinois when defendants sought to register the California judgment, and during (now) defendant's Petition to Set Aside Fraudulent Conveyance. Moreover, each issue was resolved against plaintiff and in favor of defendants.

There is no question but that the instant action involves exactly the same group of operative facts as did the previous suits. We therefore find, under an application of the transactional test, that there is an identity of causes of action. The doctrine of *res judicata* requires that plaintiff's attempt to substitute the label of abuse of process for the others she has already used to challenge that judgment must fail.

B. Final judgment(s) on the merits by court(s) of competent jurisdiction

Although not made entirely explicit in her Complaint or supporting brief, it appears that plaintiff's challenge to jurisdiction is rooted in her allegation that the California court which rendered the original judgment against Sol Green was without jurisdiction over his person. This issue was considered by that court; that court concluded it had jurisdiction over Sol Green. We afford that conclusion full faith and credit, as we are required to do. See U.S. Const. Art. IV, Sec. 1. See also *Hayes v. Louisiana Dock Co.*, 117

Ill. App. 3d 512 (1983). Furthermore, an independent review of the California court's assertion of personal jurisdiction under those circumstances reveals that it was proper. See *IBM v. Martin Property*, 261 Ill. App. 3d 854 (1996).

Moreover, we recognize that the above judgment was on the merits for purposes of *res judicata* application. See *Pfaff v. Chrysler Corp.*, 208 Ill. App. 3d 910 (1991), quoting *Durfee v. Duke*, 375 U.S. 106, 109 (1963) (the full faith and credit clause of the United States Constitution generally requires every state to give a foreign judgment at least the *res judicata* effect which the judgment would be accorded in the state which rendered it). Under California law, the default judgment against Sol Green precluded further litigation of "all material allegations contained in the complaint in the first action, and every fact necessary to uphold the default judgment." *Mitchell v. Jones*, 342 P.2d 503 (Cal.Ct.App. 1959). Furthermore, and contrary to plaintiff's contention, we find that the order of the California court which dissolved the TRO against Merrill Lynch, and dismissed with prejudice plaintiff's petition to set aside the August 13, 1993 California judgment, was a final judgment on the merits, which serves as a complete bar to further litigation on the same cause of action. See *Long Beach Grand Prix Assoc. v. Hunt*, 25 Cal. App. 4th 1195, 1197 (2nd Dist. 1994), citing *Torrey Pines Bank v. Superior Court*, 216 Cal. App. 3d 813, 820-21 (4th Dist. 1989).

C. Collateral Estoppel

The trial court also relied on the doctrine of collateral estoppel to conclude that plaintiff is barred from bringing

the instant suit. The prerequisites for the application of that doctrine are: (1) an issue, decided in the prior adjudication which is identical with the one presented in the suit in question, the determination of which was essential to that decision; (2) a final judgment on the merits; and (3) the party against whom estoppel is being asserted are the same or are in privity with a party to the prior adjudication. *Illinois State Chamber of Commerce v. Pollution Control Board*, 78 Ill. 2d 1 (1979). In light of the analysis found in sections A and B, above, we conclude that the doctrine of collateral estoppel was properly applied to bar the instant cause of action.

III. Civil Conspiracy and Aiding and Abetting

The trial court found that plaintiff's causes of action for civil conspiracy and aiding and abetting could not stand since Cantwell and Cantwell acted as the agent for Merrill Lynch. Because we determine that our conclusion with respect to the appropriate statute of limitations is dispositive of these claims, we decline to consider the matter of whether a principal and an agent can be liable for civil conspiracy or aiding and abetting. See *Board of Education of Community High School Dist. No. 94 v. Regional Bd. of School Trustees of Du Page County*, 242 Ill. App. 3d 229, 245 (1993).

A. Civil Conspiracy

Although the Illinois Supreme Court has recognized civil conspiracy as a cause of action, such a claim will exist only if one of the parties to the agreement commits some act in furtherance of the agreement, which is itself a tort. *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 65 (1994). In general, the

statute of limitations in a civil conspiracy action runs from the commission of the last overt act alleged to have caused damage. *Austin v. House of Vision, Inc.*, 101 Ill. App. 2d 251, 255 (1968). However, in deciding the limitations period for a conspiracy action, a court must look to the limitations period for the underlying tortious conduct upon which that conspiracy is based. *Austin*, 101 Ill. App. 2d at 255. In the instant case, plaintiff's conspiracy action is predicated upon the alleged facts which constitute the underlying abuse of process action. Specifically, plaintiff alleges that defendants conspired to enforce a fraudulent judgment and eventually facilitate a judicial sale of the Evanston property. Since it has already been determined that the statute of limitations for plaintiff's abuse of process claim is two years, and expired on November 5, 1995, we conclude that the time in which plaintiff could have filed a claim for civil conspiracy arising out of that same tortious conduct had also expired by the time she filed the Complaint herein.

B. Aiding and Abetting

Plaintiff relies on the same facts in support of her claim of aiding and abetting. Illinois courts have held that in the absence of provable tortious conduct by the primary wrongdoer, there will be no liability for aiding and abetting. See *Reuben H. Donnelly Corp. v. Brauer*, 275 Ill. App. 3d 300, 314 (1995). In this case, Merrill Lynch would be the purported primary wrongdoer for allegedly improperly obtaining a judgment against Sol Green in California and then moving to have the judgment registered in Illinois. In addition to being barred by *res judicata* from relitigating the question of whether defendants' conduct was tortious,

we conclude that plaintiff is precluded from raising this claim because the statute of limitations on the underlying tortious conduct (two years) has expired.

IV. Defendants' Cross-Appeal for Sanctions

Defendants filed a timely cross-appeal, seeking the imposition of sanctions pursuant to Illinois Supreme Court Rule 137. The issue was briefed and presented via oral argument to the trial court, which denied defendant's petition, stating "I don't think this is a case that warrants sanctions so I don't think an evidentiary hearing is necessary."

The determination of whether to impose sanctions rests within the sound discretion of the trial court. That decision is entitled to great weight and will not be disturbed on review absent an abuse of discretion. *Yassin v. Certified Grocers of Illinois, Inc.*, 133 Ill. 2d 458, 467 (1990). We find no abuse of discretion in this case.

Defendants (cross-appellants) refer this court to decisions from our Second and Third Districts, in which it was held that the trial court must make specific factual findings when they deny Rule 137 sanctions, and that the failure to do so is grounds for remand. See e.g., *Heiden v. Ottinger*, 245 Ill. App. 3d 612 (1993); *In re Estate of Smith*, 201 Ill. App. 3d 1005 (1990). We decline to follow those decisions, and choose instead to adhere to this District's opinion in *Shea, Rogal & Assoc. v. Leslie V.W.*, 250 Ill. App. 3d 149 (1993). In *Shea*, we held that, in accordance with the language of Rule 137, a judge is required to specifically set forth the reasons and basis for any sanction imposed,

however, there is no such specificity requirement when sanctions are denied. *Shea*, 250 Ill. App. 3d at 155. Accord *Elledge v. Reichert*, 250 Ill. App. 3d 1055 (4th Dist. 1993). Consequently, the trial court's denial of defendant's motion for Rule 137 sanctions is affirmed.

## V. Conclusion

Based on the foregoing, the order of the circuit court of Cook County is affirmed.

Affirmed.

BARTH, J., with HOFFMAN, P.J., and HALL, J., concurring.

## APPENDIX B — ORDER OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS DATED JANUARY 26, 1998

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**

**NO. 97 L 04850**

Gertrude Green,

Plaintiff,

v.

Merrill Lynch, et al.,

Defendants

**ORDER**

This cause coming to be heard upon Defendants' Motion to Dismiss pursuant to both Sections 2-615 and 2-619, continued from previous dates, the parties appearing by counsel, and the Court having reviewed the pleadings and briefs and having heard argument, and the Court being otherwise fully advised in the premises,

The Court does find that this Complaint is barred by res judicata and collateral estoppel, these issues having been litigated in California on the Motion for Preliminary Injunction and these issues having the opportunity to be raised before Judge Quinn on the Petition to Register Foreign Judgment; the Court does further find that the cause of action

for abuse of process is barred by the applicable two-year statute of limitations, and the causes of action for conspiracy and aiding and abetting cannot stand because Cantwell & Cantwell acted as the agent for Merrill Lynch;

It is therefore ordered that Defendants' Motion to Dismiss is granted and Plaintiffs' Complaint is dismissed with prejudice.

ENTER:

s/ Michael J. Hogan
Judge

**APPENDIX C — LETTER OF THE ILLINOIS SUPREME COURT DENYING PETITION FOR LEAVE TO APPEAL DATED JANUARY 29, 2001**

**ILLINOIS SUPREME COURT**
**JULEANN HORNYAK, CLERK**
**SUPREME COURT BUILDING**
**SPRINGFIELD, ILLINOIS 62701**
**(217) 782-2035**

January 29, 2001

Mr. Clinton A. Krislov
Clinton A. Krislov, P.C.
222 N. LaSalle Street
Suite 2120
Chicago, IL 60601

No. 89826 — Gertrude Green, as Adm'rx. etc., petitioner, v. Merrill, Lynch, Pierce, Fenner & Smith, etc., et al., respondents. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on February 20, 2001.

## APPENDIX D — ORDER OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, COUNTY DEPARTMENT, LAW DIVISION REGISTERING BY DEFAULT THE CALIFORNIA DEFAULT JUDGMENT DATED SEPTEMBER 21, 1989

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

No. 89 L 10820

MERRILL LYNCH, PIERCE, FENNER
& SMITH, INC., a corporation,

Plaintiff,

vs.

SOL GREEN,

Defendant.

ORDER

THIS CAUSE coming to be heard upon MERRILL LYNCH's Motion for Entry of Default Judgment against Defendant, SOL GREEN, due notice having been served and the Court being otherwise fully advised in the premises;

THE COURT DOES FIND AS FOLLOWS:

1. On August 3, 1989, MERRILL LYNCH registered a Foreign Judgment obtained in the State of California against Sol Green.

2. A Summons and Petition to Register a Foreign Judgment was served on Defendant on August 8, 1989.

3. Defendant has not filed an Appearance and Answer in this cause.

ACCORDINGLY, IT IS HEREBY ORDERED that the registered Foreign Judgment in favor of MERRILL LYNCH and against Defendant, SOL GREEN, is entered as a final Judgment of the State of Illinois; and Judgment is entered in favor of MERRILL LYNCH and against Defendant, SOL GREEN, in the amount of EIGHTY-FOUR THOUSAND, NINE HUNDRED FIFTY-FIVE AND 19/100 ($84,955.19) DOLLARS together with post-judgment interest thereon computed at the rate of 10% per annum from and after November 14, 1988 pursuant to the provisions of § 685.010 of the California Code of Civil Procedure in the amount of SEVEN THOUSAND, TWO HUNDRED FORTY AND 08/100 ($7,240.08) DOLLARS for a total Judgment amount of $95,195.27 DOLLARS plus costs of suit.

ENTER:

JUDGE THOMAS P. QUINN
SEP 21 1989

s/ Thomas P. Quinn
Circuit Court
Judge

**APPENDIX E — DEFAULT JUDGMENT OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO DATED AND FILED NOVEMBER 14, 1988 AND ENTERED NOVEMBER 15, 1988; AND REQUEST FOR ENTRY OF DEFAULT**

NAME AND ADDRESS OF ATTORNEY:
JAMES F. STIVEN, ESQ.
RICHARD P. MURPHY, ESQ.
GRAY, CARY, AMES & FRYE
401 "B" Street, Suite 1700
San Diego, CA 92101

TELEPHONE NO:
699-2812

* * *

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

PLAINTIFF: (ABBREVIATED)
MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.

DEFENDANT: (ABBREVIATED)
MOVING UP INTERNATIONAL CORPORATION, et al.

JUDGMENT BY DEFAULT
CASE NUMBER
595977

JUDGMENT BY DEFAULT BY COURT

The defendant(s) MOVING UP INTERNATIONAL CORPORATION, ROBERT GREEN, SOL GREEN and ALISON J. BOYD having been regularly served with

summons and copy of complaint, having failed to appear and answer said complaint within the time allowed by law, and the default of said defendant(s) having been duly entered, upon application of plaintiff to the Court, and after having considered the evidence:

IT IS THEREFORE ORDERED AND ADJUDGED that plaintiff(s) have and recover from said defendant(s) the following sums:

| | |
|---|---|
| Principal Sum | $ 74,928.64 |
| Attorney Fee | $ 8,000.00 |
| Interest | $ 1,544.55 |
| Costs | $ 482.00 |
| Total | $ 84,955.19 |

Dated: NOV 14 1988

s/ J. Richard Haden
Judge of the Superior Court
J. Richard Haden

*Appendix E*

**ADDENDUM**

REQUEST FOR ENTRY OF DEFAULT

| ATTORNEY (Name and Address) | TELEPHONE NO. |
|---|---|
| JAMES F. STIVEN, ESQ.<br>RICHARD P. MURPHY, ESQ.<br>GRAY, CARY, AMES & FRYE<br>401 "B" Street, Suite 1700<br>San Diego, CA 92101<br>ATTORNEY FOR *(Name)* Plaintiff | 699-2812 |

San Diego Superior Court

PLAINTIFF: MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.

DEFENDANT: MOVING UP INTERNATIONAL CORPORATION, et al.

REQUEST FOR ☒ ENTRY OF DEFAULT
☒ COURT JUDGMENT

* * *

CASE NUMBER 595977

1. TO THE CLERK: On the complaint or cross-complaint filed
   a. on *(date)*: February 19, 1988
   b. by *(name)*: MERRILL LYNCH, PIERCE, FENNER & SMITH

*Appendix E*

c. ☒ Enter default of defendant *(names)*: ROBERT GREEN, SOL GREEN, ALISON J. BOYD, MOVING UP INTERNATIONAL CORPORATION

d. ☒ I request a court judgment under CCP 585(b), (c), 989, etc. *(Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under CCP 585(d).)*

* * *

| 2. Judgment to be entered | Amount | Balance |
|---|---|---|
| a. Demand of complaint .... | $ 24,928.64 | $ 24,928.64 |
| b. *(superior court only)** ... Notice of punitive damages **SEE BELOW** | $ 50,000.00 | $ 50,000.00 |
| c. Interest ..... | $ 1,544.55 | $ 1,544.55 |
| d. Costs *(see reverse)* ..... | $ 482.00 | $ 482.00 |
| e. Attorney fees ..... | $ 12,044.44 | $ 12,044.44 |
| f. TOTALS ..... | $ 88,999.63 | $ 88,999.63 |

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* Personal injury or wrongful death actions only.

** PURSUANT TO LOCAL RULE 10.4(b)

*Appendix E*

Date: August 16, 1988

| | |
|---|---|
| RICHARD P. MURPHY<br>(TYPE OR PRINT NAME) | s/ Richard P. Murphy<br>(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF) |

FOR COURT USE ONLY

(1) ☒ Default entered as requested on *(date)*:
AUG 16 1988

* * *

ROBERT D. ZUMKALT, Clerk

By: s/ Charlene Wright
*Deputy*